

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

STATE OF NEW JERSEY,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
TRANSPORTATION, FEDERAL HIGHWAY
ADMINISTRATION, SHAILEN BHATT, in his official
capacity as Administrator of the Federal Highway
Administration, and RICHARD J. MARQUIS, in his
official capacity as Division Administrator of the New
York Division of the Federal Highway Administration,

Defendants.

Civil Action No. 23 Civ. 03885

Hon. Brian R. Martinotti

**MOTION OF *AMICI CURIAE* ENVIRONMENTAL DEFENSE FUND, NEW YORK
LEAGUE OF CONSERVATION VOTERS, TRI-STATE TRANSPORTATION
CAMPAIGN, RIDERS ALLIANCE, OPEN PLANS, REAL ESTATE BOARD OF NEW
YORK, NEW YORK LAWYERS FOR THE PUBLIC INTEREST, WE ACT FOR
ENVIRONMENTAL JUSTICE, STREETSPAC, TRANSPORTATION ALTERNATIVES,
AND NEW YORK PUBLIC INTEREST RESEARCH GROUP FUND FOR LEAVE TO
FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF DEFENDANTS' CROSS-MOTION
FOR SUMMARY JUDGMENT**

Charles S. Warren

(pro hac motion pending)

Andrew Otis

(pro hac motion pending)

Karen Steinberg Kennedy

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Amici curiae Environmental Defense Fund (“EDF”), New York League of Conservation Voters (“NYLCV”), Tri-State Transportation Campaign (“TSTC”), Riders Alliance, Open Plans, Real Estate Board of New York (“REBNY”), New York Lawyers for the Public Interest (“NYLPI”), WE ACT for Environmental Justice (“WE ACT”), StreetsPAC, Transportation Alternatives (“TA”), and New York Public Interest Research Group Fund (“NYPIRG Fund”) (collectively, “*amici*”) respectfully move for leave to file an *amicus curiae* brief in this matter.¹ The proposed *amicus* brief is attached as Exhibit 1. All parties have consented to this requested relief.

INTEREST OF THE *AMICI CURIAE*

Amici are eleven organizations representing a broad array of interests ranging from environmental protection, effective transportation, equity in the provision of public services, equity in environmental policy and enforcement, and the real estate industry all united in their goal of making the New York/New Jersey/Connecticut region a safe, healthy, and fair community.

EDF is a national nonprofit organization that links science, economics, and the law to create innovative, equitable, and cost-effective solutions to urgent environmental problems. EDF is one of the world’s largest environmental organizations, with hundreds of thousands of members across the United States—

¹ *Amici* state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

many of whom are based in the New York/New Jersey/Connecticut region—and a staff of over 1,000 scientists, policy experts, and other professionals from around the world. Protecting public health and the environment from contaminants is a core organizational mission, as is protecting land, soil, and forestry resources. EDF regularly participates in regulatory and judicial proceedings at the federal and state level.

NYLCV is a non-partisan, statewide environmental organization in New York that fights for clean water, healthy air, renewable energy, and open space. For thirty years, NYLCV has worked to lobby state and local governments on environmental policy, provide objective information to the public, and hold elected officials accountable.

TSTC is a non-profit organization dedicated to promoting sustainable transportation, equitable planning policies and practices, and strong communities in the tri-state area around New York City. TSTC uses data and policy analysis, along with strategic media outreach, to influence decision-making throughout the metropolitan region. Since it was founded in 1993, TSTC has become a leading voice in the region for transportation and land use policy reform.

Riders Alliance is New York's grassroots organization of bus and subway riders from across New York City with a shared vision: a public transit system that works for every New Yorker, in every community. Riders Alliance fights for

reliable, affordable, accessible public transit in order to build a more just and sustainable New York. Riders Alliance holds elected officials accountable and takes direct action to guarantee that riders have a powerful voice in the decisions that affect transit and the future of New York.

Open Plans is a nonprofit organization with the mission to transform how people experience New York City's streets. Open Plans uses grassroots advocacy and policy change to inspire structural reforms and cultural shifts, and promotes a people-first street culture that prioritizes community, safety, joy, mobility and empowerment.

REBNY is New York City's leading real estate trade association. Founded in 1896, REBNY has more than 14,000 members with extensive experience in the City's real estate development industry, including commercial, residential and institutional property owners, builders, managers, investors, and others. REBNY regularly publishes market data, policy reports, and broker surveys, and it provides members with various resources, including educational courses and charitable service opportunities and a wide range of other member benefits. REBNY works to promote sound public and industry policies to expand and improve New York's economy.

For nearly 50 years, NYLPI has been a leading civil rights and legal services advocate for New Yorkers marginalized by race, poverty, disability, and immigration status. Through NYLPI's community lawyering model, it bridges the gap between

traditional civil legal services and civil rights, building strength and capacity for both individual solutions and long-term impact. NYLPI's work integrates the power of individual representation, impact litigation, organizing, and policy campaigns. Guided by the priorities of its communities, NYLPI strives to secure environmental justice for low-income communities of color, achieve equality of opportunity and self-determination for people with disabilities, create equal access to health care, ensure immigrant opportunity, and strengthen local nonprofits.

Founded in 1988, WE ACT is a community-based organization in Harlem, New York City. At the city, state, and federal levels, WE ACT fights environmental racism—racial discrimination in environmental policy-making, enforcement of regulations and laws, and targeting communities of color for toxic waste disposal and siting of polluting industries. WE ACT advocates for community-driven solutions that can remedy the institutionalized harms associated with unjust urban planning policies that have plagued communities of color for generations.

StreetsPAC is a New York City-based political action committee dedicated to electing candidates who support pro-safe streets and pro-public transit policies, and to advancing such policies through related advocacy work.

TA is a leader in the movement for safe, equitable streets in New York City. TA uses a combination of neighborhood-level grassroots organizing and citywide

advocacy to push for changes in public policy, street design, enforcement, and resource allocation that transform New York City's streets for the better.

NYPIRG Fund engages New Yorkers in public education, research, and advocacy campaigns to produce policies that strengthen democracy, enhance the rights of consumers and voters, support public mass transit, and protect the environment and public health. Over the past 44 years, the NYPIRG Straphangers Campaign has organized the riding public to speak up for affordable fares, more attractive service, and the continued rebuilding and expansion of public transit.

To achieve their respective missions, *amici* participate in filing *amicus curiae* briefs in cases, like this one, that raise issues of significant concern to the populace in the New York/New Jersey/Connecticut area. As relevant here, *amici* have a strong interest in ensuring the congestion pricing program approved by the United States Department of Transportation and Federal Highway Administration goes into effect, thereby realizing the significant quality of life and environmental benefits it was designed to achieve for *amici*'s constituents in the New York/New Jersey/Connecticut area around New York City.

ARGUMENT

Courts within the Third Circuit, including courts in this district, grant motions for leave to file an *amicus curiae* brief where the proposed *amici* have demonstrated “a sufficient ‘interest’ in the case,” and have shown that the proposed brief was

“desirable” and that it “discusses matters that are ‘relevant to the disposition of the case.’” *Neonatology Assocs., P.A. v. Comm’r*, 293 F.3d 128, 129 (3d Cir. 2002); *see also, e.g., C.P. v. New Jersey Dep’t of Educ.*, No. 19-cv-12807, 2019 WL 6907490, at *1 (D.N.J. Dec. 18, 2019) (applying *Neonatology Associates* and granting leave to file an *amicus* brief); *W.F. v. Roman Cath. Diocese of Paterson*, No. 20-cv-7020, 2021 WL 2500616, at *4 n.3 (D.N.J. June 7, 2021) (same); *Ferreras v. Am. Airlines, Inc.*, No. 16-cv-2427, 2017 WL 1156737, at *3 (D.N.J. Mar. 28, 2017) (same); *Acra Turf Club, LLC v. Zanzuccki*, No. 12-cv-2775, 2014 WL 5465870, at *6 (D.N.J. Oct. 28, 2014) (same); *United States v. Alkaabi*, 223 F. Supp. 2d 583, 592 (D.N.J. 2002) (same). An *amicus* brief “may provide important assistance to the court” even in circumstances where “a party is very well represented.” *Neonatology Assocs., P.A.*, 293 F.3d at 132. This includes, for example, a brief that “explain[s] the impact a potential holding might have on an industry or other group” or provides “particular expertise.” *Id.*

Amici respectfully submit that this same result is proper here. *Amici*’s status as voices of a broad coalition of groups representing a wide range of members with diverse interests and constituencies and in diverse industries, gives them an “interest” in ensuring that the congestion pricing program approved by the United States Department of Transportation and Federal Highway Administration goes into effect, thereby realizing the significant quality of life and environmental benefits it was

designed to achieve in the New York/New Jersey/Connecticut area around New York City. *See* Ex. 1 at 1–5. *Amici*’s proposed brief thus offers valuable additional perspective, beyond that submitted by the parties, on the important quality of life and environmental benefits that would be denied to their constituents and others in and around New York City if the Court were to grant Plaintiff’s requested relief and delay the congestion pricing program, which directly explains “the impact” this Court’s holding would “have on an industry or other group.” *Neonatology Assocs.*, 293 F.3d at 132. What is more, *amici*’s proposed *amicus* brief provides “particular expertise” on issues relating to environmental review, *see* Ex. 1 at 7–25, supplying unique additional analysis which may further assist the Court. *Neonatology Assocs.*, 293 F.3d at 133.

CONCLUSION

The Court should grant leave to file the attached *amicus* brief.

Dated: December 15, 2023

Respectfully submitted,

/s/ Nathan Schwartzberg

Charles S. Warren

(*pro hac motion pending*)

Andrew D. Otis

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Karen Steinberg Kennedy

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EXHIBIT 1

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INTEREST OF *AMICI CURIAE*

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EDF is a national nonprofit organization that links science, economics, and the law to create innovative, equitable, and cost-effective solutions to urgent environmental problems. EDF is one of the world’s largest environmental organizations, with hundreds of thousands of members across the United States and a staff of over 1,000 scientists, policy experts, lawyers and other professionals from around the world. Protecting public health and the environment from toxic air pollution and stabilizing the climate are core EDF missions. EDF

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To achieve their respective missions, *amici* participate in filing *amicus curiae* briefs in cases, like this one, that raise issues of significant concern to the populace in the New York/New Jersey/Connecticut area. As relevant here, *amici* have a strong interest in ensuring that The Manhattan Central Business District (“CBD”) Tolling Program (the “CBD Tolling Program”) already approved by the United States Department of Transportation and Federal Highway Administration goes into effect, thereby realizing the significant quality of life and environmental benefits it was designed to achieve for *amici*’s constituents in the New York/New Jersey/Connecticut area.

SUMMARY OF ARGUMENT

Amici submit this brief to support a program that can finally begin to effectively address the intractable problems of regional traffic congestion and related poor air quality. Residents of the region deserve to receive, as soon as possible, the environmental, health, transportation, equity and accessibility, environmental

justice, and positive economic and financial benefits of establishing a large-scale congestion pricing program. At a time when the imminent dangers and adverse impacts of climate change have become all too apparent, the implementation of such a program is needed now more than ever. This Court should allow the Finding of No Significant Impact for the CBD Tolling Program made by the United States Department of Transportation and Federal Highway Administration (“FHWA”) to stand so that the process to approve the CBD Tolling Program may proceed expeditiously. *Amici* respectfully submit that the Court should do so for the following three reasons.

First, implementing the CBD Tolling Program would improve the quality of life for millions of people in the New York/New Jersey/Connecticut region including, contrary to the Plaintiff’s position in this litigation, New Jersey commuters and members of New Jersey environmental justice communities. The program is forecasted to reduce region-wide traffic congestion both within the Manhattan CBD itself and in surrounding areas, such as New Jersey. The program would also reduce region-wide air pollution, likely saving lives and preventing hospitalizations. Indeed, the CBD Tolling Program is expected to reduce particulate pollution and ozone precursors, in addition to emissions of toxic air pollutants from mobile sources, throughout the New York/New Jersey/Connecticut region. Moreover, significant transit investments funded by the CBD Tolling

Program would provide a steady source of funding for the Metropolitan Transportation Authority (“MTA”) and the transit services it operates for all riders, including the 40% of New Jersey commuters using MTA subways and buses. These benefits would improve the quality of lives in the entire region for years to come.

Second, after an extensive outreach and analysis of the potential environmental justice impacts of a CBD Tolling Program throughout the region, including in New Jersey, the MTA has committed to mitigation of adverse impacts to environmental justice communities affected by predicted traffic increases, such as setting toll rates and encouraging overnight delivery in the Manhattan CBD, to reduce truck vehicle miles traveled (“VMT”) in New Jersey.

Third, the examples of successful implementation of similar congestion pricing programs in other cities and their surrounding areas across the world provide compelling support for the proposed Manhattan CBD tolling program.

ARGUMENT

I. Implementing a CBD Tolling Program Would Improve the Quality of Millions of Lives in the New York/New Jersey/Connecticut Region, Including in Environmental Justice Communities in New Jersey

With over 22 million residents and 10.7 million jobs, the Manhattan CBD and the surrounding 28 counties comprise the “largest and most economically

significant metropolitan region in the United States.”² The Manhattan CBD is the economic, cultural and transportation hub of this dynamic area. Manhattan is connected to the rest of the region by twenty vehicular bridges and tunnels, the nation’s three largest commuter railroads, the largest subway system, and two of the five largest bus transit systems in the United States.³ As of 2019, an average of 7.7 million people entered and left the Manhattan CBD daily.⁴ This total is roughly equivalent to the combined populations of the cities of Los Angeles,⁵ Houston,⁶ and Dallas,⁷ commuting daily into and out of an area of about 8.5 square miles,⁸ slightly larger than half the size of the ancient city of Rome.⁹

Despite the fact that 75% of those entering the CBD every day use mass transit of one kind or another,¹⁰ New York City was the most congested of

² U.S. Department of Transportation, Federal Highway Administration, Central Business District (CBD) Tolling Program Final Environmental Assessment (“EA”), April 2023 p. ES-2, <https://new.mta.info/project/CBDTP/environmental-assessment>

³ See *id.*

⁴ See EA Figure ES-2 at p. ES-3.

⁵ See *Los Angeles*, Data Commons, https://datacommons.org/place/geoId/0644000/?utm_medium=explore&mprop=count&popt=Person&hl=en (last visited Dec. 14, 2023).

⁶ See *Houston*, Data Commons, https://datacommons.org/place/geoId/4835000/?utm_medium=explore&mprop=count&popt=Person&hl=en (last visited Dec. 14, 2023).

⁷ See *Dallas*, Data Commons, https://datacommons.org/place/geoId/4819000/?utm_medium=explore&mprop=count&popt=Person&hl=en (last visited Dec. 14, 2023).

⁸ See Jeffrey M. Zupan et al., *An Exploration of Motor Vehicle Congestion Pricing in New York*, Regional Plan Association (Nov. 2003), <https://s3.us-east-1.amazonaws.com/rpa-org/pdfs/RPA-An-Exploration-of-Congestion-Pricing-in-New-York.pdf> p. 18 (last visited Dec. 14, 2023).

⁹ See Andrew Curry, *Rome Reborn Archaeologists unveil a 3-D model of the great city circa A.D. 400*, Smithsonian Magazine (June 30, 2007), <https://www.smithsonianmag.com/history/rome-reborn-157825055/#:~:text=The%20urban%20center%20of%20the,understand%20how%20the%20city%20functioned.> (last visited Dec. 14, 2023).

¹⁰ See EA Figure ES-2 at p. E-3.

any urban area in the United States in 2020 and 2021.¹¹ This congestion delays emergency vehicles, erodes worker productivity and raises the cost of deliveries and the overall cost of doing business through increased commuting and travel times for vehicles using the roadways. Such congestion and related vehicle use in the area have resulted in unhealthy air quality for millions of residents. Air quality in 25 of the 28 counties in the EA study area with a total population of over 21.4 million did not achieve the health-based 2008 NAAQS for ozone or the stricter 2015 NAAQS for ozone. Furthermore, Manhattan did not meet the NAAQS for particulates 10 microns in diameter or smaller (PM₁₀).¹² Automobiles and trucks are the major contributors to these high ambient ozone levels. One of the most effective methods for reducing toxic emissions from mobile sources would be lowering the total VMT in the New York/New Jersey/Connecticut metropolitan area.

A. The CBD Tolling Program Would Reduce Region-Wide Traffic Congestion

Without an effective traffic management program, congestion in the Manhattan CBD and region-wide will only increase. Absent a CBD Tolling Program, project sponsors project that VMT will grow region-wide by 8.8% between 2023 and 2045. The Manhattan CBD is forecast to experience VMT

¹¹ See EA Figure ES-3 at p. ES-5.

¹² See EA Table 10-2 at p.10-4. The annual NAAQS for PM₁₀ was revoked on December 17, 2006.

growth of 4.9% during that period, and the 14 New Jersey counties in the study area are forecast to experience VMT growth of 10.6% during the same period.¹³

Action is urgently needed to control and reduce congestion region-wide.

All of the CBD Tolling Program scenarios modeled in the EA would not only slow the growth in VMT but would also reduce VMT region-wide.¹⁴

Starting in 2023 and compared to the projected baseline without a CBD Tolling Program in 2045, the CBD Tolling Program scenarios analyzed in the EA would reduce VMT in the Manhattan CBD from 6 to 9%.¹⁵ Such significant reductions could materially impact congestion within the Manhattan CBD resulting in reduced traffic wait times, increased productivity and shortened emergency vehicle response times.

Each of the proposed CBD Tolling Program scenarios would reduce all daily vehicle entries into the Manhattan CBD by 15.4 %-19.9%¹⁶ compared to the 2023 no-action scenario. Similar reductions are forecast when compared to the 2045 baseline without a CBD Tolling Program.¹⁷ Significantly, the CBD Tolling Program scenarios would reduce daily truck trips *through* the Manhattan CBD compared to the status quo at levels ranging from a low of 21% under Scenario G

¹³ See EA Table 4A-2 at p. 4A-10.

¹⁴ See EA Table 4A-7 at p. 4A-15.

¹⁵ See EA Table 4A-7 and 4A-14 at pp. 4A-15 & 4A-21, respectively.

¹⁶ See EA Table 4A-5 at p. 4A-12.

¹⁷ See EA Table 4A-12 at p. 4A-19.

to a high of 81% under Scenario F.¹⁸ This would not only reduce the emissions of diesel exhaust within the Manhattan CBD but would also reduce the risk of auto accidents. Moreover, under modeled Scenario A the CBD tolling program would, at a minimum, result in reductions in VMT in other areas, including by 2.24% in analysis year 2023¹⁹ and 1.59% in year 2024 in Hudson County, New Jersey.²⁰

B. A CBD Tolling Program Would Reduce Region-Wide Air Pollution, Likely Saving Lives and Preventing Hospitalizations

A region-wide reduction in VMT would result in a concomitant reduction in air pollutants region-wide in both 2023 and 2045.²¹ While the largest reductions would be achieved in the Manhattan CBD and the rest of Manhattan, other areas would also see reductions. For example, the CBD Tolling Program is expected to result in a reduction of all air pollutants in Hudson County, New Jersey compared to the 2045 no-action scenario. This would range from a 3.06% reduction in PM₁₀ and 2.48% reduction in particulate matter 2.5 microns or less in size (“PM_{2.5}”) to a 1.31% and 0.61% reduction respectively of the ozone precursors nitrogen oxides (“NOx”) and volatile organic compounds (“VOCs”).²²

The reductions in PM₁₀ and PM_{2.5} emissions in the Manhattan CBD and the rest of Manhattan would significantly improve public health in the region.

¹⁸ See EA Table 16-1 at p. 16-3.

¹⁹ See EA Table 10-8 at p. 10-23.

²⁰ See EA Table 10-9 at p. 10-24.

²¹ See EA Table 10-7 at p. 10-22.

²² See EA Table 10-9 at p. 10-24.

The EA estimates that the CBD Tolling program Scenario A would reduce annual PM₁₀ emissions by 12.16% in the Manhattan CBD and 9.75% in the rest of Manhattan, compared to the 2023 no-action scenario.²³ In 2045, it would reduce annual PM and 11.55% in the Manhattan CBD and 10.24% in the rest of Manhattan.²⁴ Particulate matter pollution—both PM₁₀ and PM_{2.5}—poses a severe threat to public health, especially for vulnerable populations. According to the California Air Resources Board:

For PM_{2.5}, short-term exposures (up to 24-hours duration) have been associated with premature mortality, increased hospital admissions for heart or lung causes, acute and chronic bronchitis, asthma attacks, emergency room visits, respiratory symptoms, and restricted activity days. These adverse health effects have been reported primarily in infants, children, and older adults with preexisting heart or lung diseases. In addition, of all of the common air pollutants, PM_{2.5} is associated with the greatest proportion of adverse health effects related to air pollution, both in the United States and world-wide based on the World Health Organization's Global Burden of Disease Project.

Short-term exposures to PM₁₀ have been associated primarily with worsening of respiratory diseases, including asthma and chronic obstructive pulmonary disease (COPD), leading to hospitalization and emergency department visits.

Long-term (months to years) exposure to PM_{2.5} has been linked to premature death, particularly in people who have chronic heart or lung diseases, and reduced lung function growth in children. The effects of long-term exposure to

²³ See EA Table 10-8 at p. 10-23.

²⁴ See EA Table 10-9 at p. 10-24.

PM10 are less clear, although several studies suggest a link between long-term PM10 exposure and respiratory mortality. The International Agency for Research on Cancer (IARC) published a review in 2015 that concluded that particulate matter in outdoor air pollution causes lung cancer.²⁵

Air pollution poses a major environmental threat to the health of New York City residents. The New York City Health Department estimates that each year, PM_{2.5} pollution causes more than 3,000 deaths, 2,000 hospital admissions for lung and heart conditions, and approximately 6,000 emergency room visits for asthma in children and adults citywide. The Department also estimates that citywide, “a modest reduction of 10% in current PM_{2.5} levels could prevent more than 300 premature deaths, 200 hospital admissions and 600 emergency department visits *annually*”²⁶ (emphasis added)

While the impacts of particulate pollution vary considerably across the city and are significantly correlated with neighborhood income level, short and long-term reductions of particulate emissions of the magnitudes expected from a Manhattan CBD tolling plan would greatly improve the quality of life for millions of people. Such reductions are also likely to prolong lives that might otherwise

²⁵ *Inhalable Particulate Matter and Health (PM2.5 and PM10)*, California Air Resources Board, <https://ww2.arb.ca.gov/resources/inhalable-particulate-matter-and-health> (last visited Dec. 14, 2023).

²⁶ *Air Pollution and the Health of New Yorkers: The Impact of Fine Particles and Ozone*, NYC Health, <https://www.nyc.gov/assets/doh/downloads/pdf/eode/eode-air-quality-impact.pdf> (last visited Dec. 14, 2023).

have been cut short by exposure to higher particulate levels, keeping some children out of hospitals, and helping protect others with heart and lung conditions.

In addition to reducing particulate matter pollution and ozone precursors, a CBD Tolling Program would also reduce emissions of toxic air pollutants from mobile sources, including the known human carcinogens 1,3-butadiene,²⁷ benzene,²⁸ and formaldehyde,²⁹ among others.³⁰

These significant reductions in toxic air pollutants would not be limited to Manhattan and the New York metropolitan area. Other areas would also see reductions in toxic air emissions from mobile sources. For example, the EA estimates that Hudson County, New Jersey would experience reductions of 3.32 % of 1,3-butadiene, 2.0% of benzene and 3.21% of formaldehyde compared with the 2045 no-action scenario.³¹

²⁷ See *Toxic Substances Portal*, Agency for Toxic Substances and Disease Registry, <https://wwwn.cdc.gov/TSP/ToxFAQs/ToxFAQsDetails.aspx?faqid=458&toxid=81#:~:text=and%20blood%20chang%20lymphatic%20system> (last visited Dec. 14, 2023).

²⁸ Exposure to benzene has been associated with development of a particular type of leukemia called acute myeloid leukemia (AML). See *Public Health Statement for Benzene*, Agency for Toxic Substances and Disease Registry, [https://wwwn.cdc.gov/TSP/PHS/PHS.aspx?phsid=37&toxid=14#:~:text=Exposure%20to%20benzene%20has%20been,carcinogen%20\(can%20cause%20cancer\)](https://wwwn.cdc.gov/TSP/PHS/PHS.aspx?phsid=37&toxid=14#:~:text=Exposure%20to%20benzene%20has%20been,carcinogen%20(can%20cause%20cancer)) (last visited Dec. 14, 2023).

²⁹ See *Formaldehyde*, National Cancer Institute, <https://www.cancer.gov/about-cancer/causes-prevention/risk/substances/formaldehyde#:~:text=Which%20cancers%20are%20associated%20with,%2C%20nasal%20cavity%2C%20and%20nasopharynx> (last visited Dec. 14, 2023).

³⁰ See EA Table 10-12 at p. 10-28.

³¹ See *id.*

C. Significant Transit Investments Funded by a CBD Tolling Program Would Improve the Quality of Life Region-Wide for Years to Come

Improved air quality and related improvements in health and well-being for millions of people are benefits from a CBD Tolling Program that would accrue not only to residents of the New York and New Jersey region but also to Connecticut residents. A CBD Tolling Program would also provide a steady source of funding for the MTA and the transit services it operates. These services are the life blood of the region, moving millions of residents from home to work and other activities every day.

Project sponsors estimate that a CBD tolling program would raise sufficient net revenue annually to fund \$15 billion of the MTA's \$51.5 billion 2020-2024 Capital Program ("Capital Program").³² These fees would be the Capital Program's single largest source of revenue and would fund 30% of the 2020 – 2024 Capital Program.³³ They would also fund 50% of the remaining Capital Program investments.³⁴ These much needed MTA capital investments would include improvements to MTA services, such as new subway cars,

³² See EA at ES-7.

³³ See *MTA Capital Program 2020-2024| Rebuilding New York's Transportation System*, MTA Capital Program October 2019 at p. 19., <https://new.mta.info/document/10511> (last visited Dec. 14, 2023).

³⁴ See Statement of Jamie Torres-Springer, MTA President of Construction and Development, at the December 6, 2023 MTA Board Meeting, <https://new.mta.info/transparency/board-and-committee-meetings/november-2023> (last visited Dec. 14, 2023).

installation of modern signaling equipment and upgrading of communications equipment.

These MTA investments would also improve access to the system for tens of thousands of riders. The improvements would include the installation of new elevators for accessibility at 70 stations in all boroughs, along with wider fare gates at all ADA stations and replacement of escalators and elevators. A total of \$5.2 billion of the MTA Capital Program has been allocated exclusively for accessibility improvements.³⁵ A more accessible subway system would encourage more people to use transit, resulting in fewer vehicle trips. These could include trips by up to 30,000 New Yorkers with disabilities currently reliant on the Access-A-Ride paratransit system due to the inaccessibility of the subway system.³⁶

The foregoing MTA improvements would not benefit only New Yorkers. The project sponsors estimate that, on an average work day between 2012 and 2016, 226,300 commuters from New Jersey entered the Manhattan CBD, more than from Long Island and the counties north of New York City combined and more than from the Bronx or Queens.³⁷ According to the MTA, roughly 40%

³⁵ See *Station accessibility projects*, MTA (updated Dec. 6, 2023), <https://new.mta.info/project/station-accessibility-upgrades> (last visited Dec. 14, 2023).

³⁶ While many Access-A-Ride users are unable to use the subway due to the severity of their disabilities, a significant portion – over 30,000 – could use the system, instead of paratransit, if it were made accessible. See Press Release, *DiNapoli: Shift in MTA's Paratransit Program Generates Cost Savings*, Nov. 20, 2023, <https://www.osc.ny.gov/press/releases/2023/11/dinapoli-shift-mtas-paratransit-program-generates-cost-savings> (last visited Dec. 14, 2023).

³⁷ See EA Table 17-3 at p. 17-16.

of the New Jersey commuters into New York rode MTA subways and buses.³⁸

The improvement in MTA facilities and service would not benefit only New Jersey commuters who ride the MTA. All New Jersey commuters entering the CBD would reap the productivity benefits of reduced congestion along with the health and welfare benefits of reduced air pollution in the Manhattan CBD and the rest of Manhattan from the implementation of a CBD Tolling Program.

A fully funded and well-functioning MTA would result in significant reductions in greenhouse gas emissions compared to a scenario without effective transit. Transportation is a major source of greenhouse gases nationally (29% of emissions)³⁹ and is the single largest source of greenhouse gas emissions in New Jersey (37%)⁴⁰ and of carbon dioxide, the most numerous greenhouse gas, in New York State (43.1%).⁴¹ Even so, the per capita transportation emissions in New York City are some of the lowest in the nation at 1.9 metric tons, one third of the national average.⁴² This is because of the high levels of transit use in the region.

³⁸ See Larry Higgs, NY: MTA in talks to possibly settle N.J. congestion pricing lawsuit [www.nj.com](https://www.masstransitmag.com/management/news/53078217/ny-mta-in-talks-to-possibly-settle-nj-congestion-pricing-lawsuit), Nov. 15, 2023, <https://www.masstransitmag.com/management/news/53078217/ny-mta-in-talks-to-possibly-settle-nj-congestion-pricing-lawsuit> (last visited Dec. 14, 2023).

³⁹ See EPA, *Fast Facts on Transportation Greenhouse Gas Emissions*, <https://www.epa.gov/greenvehicles/fast-facts-transportation-greenhouse-gas-emissions> (last visited Dec. 14, 2023).

⁴⁰ See *How much GHG is contributed by these vehicles?*, Drive Green New Jersey, <https://dep.nj.gov/drivegreen/mhdv-contribute/#:~:text=Just%20like%20the%20nation%20as,of%20the%20state's%20entire%20> (last visited Dec. 14, 2023).

⁴¹ See U.S. Energy Information Administration, *Environment*, <https://www.eia.gov/environment/emissions/state/> (last visited Dec. 14, 2023).

⁴² See *Transit Avoided Carbon*, MTA (updated Nov. 21, 2019), <https://new.mta.info/sustainability/transit-avoided-carbon> (last visited Dec. 14, 2023).

The MTA estimates that every year its operations result in a net 17 million metric tons of annual greenhouse gas emissions avoided,⁴³ an amount that is comparable to the total annual greenhouse gas emissions of the country of Slovenia.⁴⁴ Without guaranteed funding, the MTA cannot effectively continue to provide the avoided greenhouse gas emissions benefits that are enjoyed by everyone in the region.

II. The Project Sponsors Performed Extensive Environmental Justice Outreach and Analysis and Committed to Mitigation of Adverse Impacts Upon Environmental Justice Communities Affected by Predicted Diversion of Traffic

Although the significant overall benefits of a CBD Tolling Program will be experienced region-wide, some areas could experience slight increases in diverted traffic with resulting air emissions. The project sponsors developed an extensive public and environmental justice engagement process in the fall and winter of 2021 that included 19 separate webinars with over 1,000 participants.⁴⁵ Of the 19 total webinars 9 were targeted at environmental justice.⁴⁶ The webinars were focused on geographic areas, although anyone was allowed to participate.⁴⁷ Of the 19 total webinars, five are listed as being located in New Jersey and of the 9 environmental justice webinars, 3 each were located in New Jersey, New York and

⁴³ See CBC 2021 Report at pp. 3-4.

⁴⁴ See *Greenhouse Gas Emissions*, OECD.Stat, https://stats.oecd.org/Index.aspx?DataSetCode=air_ghg (last visited Dec. 14, 2023).

⁴⁵ See EA Table 18-2 at p. 18-6.

⁴⁶ See *id.*

⁴⁷ See EA at p. 18-5.

Connecticut.⁴⁸ The project sponsors also consulted with an Environmental Justice Stakeholder Working Group and an Environmental Justice Technical Advisory Group.⁴⁹

Participants in the webinars and in the environmental justice advisory groups identified several issues of concern, including potential traffic, air quality and noise impacts near environmental justice communities due to the diversion of traffic from the Manhattan CBD, among other issues.⁵⁰

To determine if the CBD Tolling Programs could have disproportionate adverse impacts on these communities, the project sponsors performed a more in-depth environmental justice analysis. Following guidance developed by the federal government for the performance of environmental justice analyses,⁵¹ the project sponsors assessed both regional-scale effects on environmental justice communities in the 28 county study area and more local effects in neighborhoods in a 10-county study area that would be most impacted by any CBD Tolling Program scenario.⁵² In addition to areas of New York City and Long Island, the ten county study area included Bergen, Essex, Hudson and Union counties in New Jersey.⁵³ The analysis developed an extensive racial and economic

⁴⁸ See EA Table 18-2 at p. 18-6.

⁴⁹ See EA at p. 18-7.

⁵⁰ See EA at p. 17-4.

⁵¹ *Guidance on Environmental Justice and NEPA*, Federal Highway Administration (“FHWA”) 2011, United States Department of Transportation Order 5610.2C, and FHWA Order 6640.23A. See EA p. 17-2.

⁵² See EA Figures 17-3 – 17-14 at pp. 17-12-17-71, respectively.

⁵³ See Table 17-1 at p. 17-10.

profile of the 10 counties in the local study area. Members of many of the environmental justice communities in the 10-county study area already exposed to disproportionately high levels of air pollutants having pre-existing pollutant indicators at or above the 80th percentile of the national average. In addition, many residents of these communities also experience chronic disease at greater rates than average, with chronic disease indicators at or above the 66.66th percentile of the national average. Many of these communities experience both disproportionately high levels of air pollution and chronic disease.⁵⁴

The analysis showed that car and truck traffic and related air emissions could increase slightly in Bergen County, New Jersey, and in the Bronx, New York,⁵⁵ among other areas. While many communities with predominately minority or low-income residents or both are forecasted to experience cleaner air under the various CBD Tolling Program scenarios, the EA predicts that air pollutant levels could rise slightly in some of these areas.⁵⁶

The project sponsors identified the three areas where modeling predicted the largest annual average increases in diesel truck traffic and particulate

⁵⁴ See EA Figures 17-10 and 17-11.

⁵⁵ Emissions increases ranging from 0.2% for VOCs to 0.74% for PM₁₀ are forecasted for Bergen County in 2023 and from 0.14% to 0.67% in 2045 and from 0.02% for carbon monoxide to 0.30% for PM₁₀ in the Bronx in 2023. In 2045, carbon monoxide levels are forecasted to fall by 0.06% and PM₁₀ levels are forecasted to increase to 0.21% in 2045. Total mobile source toxic air emissions were forecasted to increase by 0.7% in Bergen County in 2023 and by 0.6% in 2045 and by 0.2% in the Bronx in 2023 and by 0.1% in 2045. See EA Tables 10-7 and 10-8.

⁵⁶ See EA Figures 17-7 – 17-9.

matter on highways under any of the analyzed CBD Tolling Program scenarios.

These three areas are:

- I-95 west of the George Washington Bridge in Fort Lee, New Jersey (Scenario C);
- The Cross Bronx Expressway at Macombs Road in the Bronx, New York (Scenario B); and
- The RFK (Triborough) Bridge entrance near 21st Street and Hoyt Avenue in Queens, New York (Scenario E).⁵⁷

These are the are potential worse case scenarios where annual average truck traffic was forecasted to increase the most under the various scenarios. They are also located in environmental justice communities in which the nearest “receptors” (residents) are in very close proximity to the roadways, with the closest receptors ranging from approximately 18 feet from the roadway at the RFK site⁵⁸ to 43 feet at the Fort Lee site.⁵⁹

As a result of the analysis, project sponsors identified potential adverse impacts to environmental justice populations, including “potential adverse impacts to environmental justice populations as a result of traffic diversions in communities already potentially vulnerable due to pre-existing air pollution and chronic disease.”⁶⁰

⁵⁷ See EA at Appendix 10-24.

⁵⁸ See EA at Appendix 10-48.

⁵⁹ See EA at Appendix 10-46.

⁶⁰ See EA Table 17-15 at p. 17-61.

The project sponsors proposed a set of mitigation measures designed to address these potential adverse impacts and other potential adverse impacts that might be identified during further program design and implementation.⁶¹ Some of these mitigation measures are regional in scope but would address potential adverse impact to specific environmental justice communities. For example, the MTA has committed to setting overnight truck tolls on the seven crossings that it controls into Manhattan at levels that would encourage truck traffic to access the Manhattan CBD during the overnight hours, reducing expected truck trips on the 1-95 corridor in Bergen County to avoid the Manhattan CBD.⁶² In addition, expansion of the New York City Department of Transportation program to encourage truck deliveries between 7:00 p.m. and 6:00 a.m. and other measures were modeled to show an improvement in air quality in Bergen County, New Jersey.⁶³

There are other mitigation measures that will be implemented along with a CBD Tolling Program. The MTA has committed to an adaptive management approach that will include monitoring the efficacy of the mitigation methods, continuing consultations with affected stakeholders, and committing to adjust the CBD Tolling Program as needed.

⁶¹ See EA Table 17-16 at p. 17-65.

⁶² See *id.*

⁶³ See EA at p. 17-63-67.

The MTA has committed to a total mitigation package of \$207.5 million. In addition to the reduction in overnight tolls described above, mitigation measures will include subsidies for low income drivers; paying local fleet operators to reduce truck emissions under the NYC Clean Truck Program; constructing electric truck charging infrastructure; installing roadside vegetation to improve near-road air quality; renovating parks and green spaces in environmental justice communities; and installing air filtration units in schools located near highways.⁶⁴

III. Similar CBD Tolling Programs Have Reduced Congestion and Improved Public Health in Cities Around the World

Five cities have introduced congestion pricing programs similar to the Manhattan CBD Tolling Program.⁶⁵ The first was in Singapore in 1975 and that program continues. Introduced in 2003, the London Congestion Charging Scheme (LCCS) initially required non-exempt drivers to pay £5 to enter an 8-mile square area of central London bounded by the London inner ring road between 7:30 a.m. and 6:30 p.m. from Monday to Friday. Like the proposed CBD Tolling Program, the overall plan included major investments in transit.⁶⁶ Since then, the charge has

⁶⁴ See EA Table 17-16, at p. 17-65.

⁶⁵ See Joe Peach, *5 Cities with Congestion Pricing*, Smartcities dive, <https://www.smartcitiesdive.com/ex/sustainablecitiescollective/five-cities-congestion-pricing/28437/> (last visited Dec. 14, 2023).

⁶⁶ See *Two decades in, what can other cities learn from the London congestion charge?*, ARUP, <https://www.arup.com/perspectives/two-decades-in-what-can-other-cities-learn-from-the-london-congestion-charge> (last visited Dec. 14, 2023).

risen to £15 (\$18.50), and the effective times have been changed from 7:00 a.m. to 6:00 p.m. weekdays and noon to 6:00 p.m. on Saturdays, Sundays and bank holidays, except Christmas Day and New Year's Day.⁶⁷

The LCCS has been an impressive success. As of 2020, congestion was reduced in central London by 30% and greenhouse gas emissions by 12% and transit ridership increased by 38%. Between 2002 and 2014, car traffic entering central London fell by 39%. Furthermore, London has continued to monitor impacts from the LCCS and has adapted the program accordingly.⁶⁸

The LCCS offers a useful model for a CBD Tolling Program. Both programs would cover areas of similar size with access points that allow for relatively easy tolling. Both areas of the respective cities covered or to be covered by the congestion pricing program (i) are financial and transport hubs of their respective cities; (ii) had or have extensive traffic congestion and related air pollution issues; and (iii) are served by transit and have high rates of transit usage that could rise even higher. In addition, both cities require significant investment to maintain transit infrastructure and service levels. That London has managed to reduce congestion and related air emissions using the LCCS indicates that the CBD

⁶⁷ See *Congestion Charge*, Transport For London, <https://tfl.gov.uk/modes/driving/congestion-charge#:~:text=The%20Congestion%20Charge%20is%20a,by%20setting%20up%20Auto%20Pay>. (last visited Dec. 14, 2023).

⁶⁸ See *Downtown Congestion Pricing Study Case Study: London*, San Francisco County Transportation Authority (Feb. 2020), https://www.sfcta.org/sites/default/files/2020-02/Congestion-Pricing-Case-Studies_2020-02-13.pdf (last visited Dec. 14, 2023).

Tolling Program, if structured correctly, could similarly reduce congestion and emissions in the center of the New York metropolitan area.

Following its establishment in 2007 after a seven-month trial period in 2006, the Stockholm congestion pricing program has produced impressive public health and environmental benefits. A researcher at Johns Hopkins University reported that the rate of asthma attacks among local children dropped by nearly 50% and air pollution levels dropped between five percent and 10% as result of the congestion pricing program.⁶⁹ During the trial period in 2006, the rate of asthma symptoms in children began to decline immediately and became even more pronounced a few years after the scheme became permanent. Additional benefits were felt immediately as congestion levels fell 20% to 25% during the seven-month trial period in 2006.⁷⁰

CONCLUSION

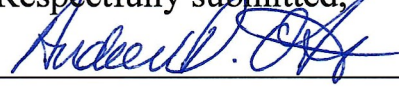
For the reasons set forth above, *amici* respectfully urge the Court to grant Defendants' cross-motion for summary judgment.

⁶⁹ See Patrick Ercolano, *Study: Stockholm traffic tax helps kids in Sweden breathe easier Decreases in air pollution lead to dramatic drop in asthma attacks among young children*, John Hopkins University Mar. 2, 2017, <https://hub.jhu.edu/2017/03/02/health-effects-for-children-sweden-traffic-tax/> (last visited Dec. 14, 2023).

⁷⁰ *Id.*

Dated: December 15, 2023

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Charles S. Warren", is written over a horizontal line.

Charles S. Warren

(pro hac motion pending)

Andrew D. Otis

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